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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,185	12/05/2003	Roger Thomas	P-US-PR 1108	2379

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EXAMINER	
SELF, SHELLEY M	

ART UNIT	PAPER NUMBER
3725	

DATE MAILED: 11/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/729,185	THOMAS, ROGER	
	Examiner	Art Unit	
	Shelley Self	3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 August 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *19 August 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

The amendment filed on August 28, 2006 has been considered but is ineffective to overcome the prior art reference.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-6, 8-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellew et al. (5,463,816) in view of Eichberger et al. (5,815,934) and Van Swearingen (3,952,484). With regard to claims 1-3, 5, 6, 8-10 and 12, Bellew discloses a planer assembly comprising a planer and a debris collection container capable of being connected to the planer, the planer comprising: a shoe defining an aperture (fig. 5); a body mounted on the shoe, the body defining a recess (fig. 5) and an exhaust aperture (figs. 3-5); a cutting drum (28) having blades (40) rotatably mounted within the recess of the body, a part of the periphery of the cutting drum projecting through the aperture (fig. 5) in the shoe; a deflector (12) having a connector (56); a motor (24) driveably connected to the cutting drum; an airflow generator (26) operable to create an airflow within the body for entraining debris created by the action of the cutting drum and to move the debris to the exhaust aperture through which the air and any entrained debris are

expelled from the body; and the debris collection container comprising: a receptacle/bag for storage of debris (col.4, lines 9-11) generated by the cutting drum; a curved, part spherical connector (56; figs. 2, 3) connectable between the receptacle/bag and the exhaust aperture of the body of the planer and through which debris can pass from the body to the receptacle. Bellew does not disclose the deflector having a tube section wherein a rib is angled in relation to a longitudinal axis of the tube section, at least a portion of the connector is transparent for viewing debris or the deflector to have a curved section that has a substantially U-shaped cross section.

Eichberger teaches in a very similar art a planer assembly comprising a shoe defining an aperture (fig. 1) a body (fig. 1) a cutting drum (15) a motor (8, 19) an airflow generator, a deflector (50) having a tube section (50) that has a substantially circular cross-section (fig. 11) curved section that has a substantially U-Shaped cross section (fig. 7-9; col. 4, lines 60-63) and a rib (56) formed between the tube section and curved section and surrounding a circumference of the deflector (figs. 7-9, 11) and the rib is angled in relation to a longitudinal axis of the tub section wherein the deflector (50) is connectable to an exhaust aperture (25, 52) for chip ejection/removal from the planer apparatus. Eichberger teaches this construction so as to efficiently remove/eject chips formed during operation from the planer. Because the references are from a similar art, it would have been obvious at the time of the invention to one having ordinary skill in the art to construct Bellew having a deflector having a substantially U-shaped cross section connectable to the exhaust aperture for efficiently removing and/or ejecting chips/debris from the planer as taught by Eichberger.

Regarding the recitation , "a rib that is angled", Examiner notes both 0° and 90° represent angles. Examiner further notes that Eichberger's rib (56) extends in an upward direction from

the longitudinal axis therefore at the very least creating an angle between the longitudinal axis, the upward accent of the rib. Thus disclosing a rib angled in relation to a longitudinal axis.

As to the transparency of the deflector/connector, it would have been obvious at the time of the invention to one having ordinary skill in the art to construct either Bellew's connector (56) and deflector (12) or Eichberger's deflector/connector of transparent material because it is within the general skill of a worker in the art to select a known material on basis of its suitability for the intended use as a matter of obvious design expedient. The mere selection of a known material, i.e. transparent material does not in itself warrant patentability. See *In re Leshin,* 125 USPQ 416.

Moreover, Van Swearingen teaches in a closely related art the use of a transparent connector (5; col. 1, lines 61-64) in conjunction with a cutting device and dust/bag collector container assembly. Van Swearingen teaches a cutter (1) having an expulsion aperture (2) for expelling cut debris from a material. Van Swearingen further teaches a connector (5) connected to expulsion aperture (2) and further connected to a debris collection container (fig. 1). Van Swearingen explicitly teaches the use of a transparent connector (5) so as to view the debris being expelled to the debris collection container. Because the references are from a closely related art and deal with a similar problem (i.e. expulsion of cut debris from a workpiece into a debris collection container so as not to jam the cutting machine) it would have been obvious at the time of the invention to one having ordinary skill in the art to construct Bellew's connector (56) of a transparent material so as efficiently monitor the expulsion of the debris from the cutter into the debris collection container as taught by Van Swearingen.

With regard to claim 4, Bellew discloses the curved connector acts as a deflector to turn the direction of travel of the air or debris entrained within the air in the connector (12) through substantially ninety degrees (figs, 2, 3; col. 3, lines 56-65).

Additionally claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eichberger et al. (5,815,934) in view of Bellew et al. (5,463,816) and Van Swearingen (3,952,484). With regard to claims 1-6, 8-10 and 12, Eichberger discloses a planer assembly comprising a shoe defining an aperture (fig. 1) a body (fig. 1) a cutting drum (15) a motor (8, 19) an airflow generator (11), a deflector (50) having a tube section (50) that has a substantially circular cross-section (fig. 11) curved section that has a substantially U-Shaped cross section (fig. 7-9; col. 4, lines 60-63) and a rib (56) formed between the tube section and curved section and surrounding a circumference of the deflector (figs. 7-9, 11) and the rib is angled in relation to a longitudinal axis of the tub section wherein the deflector (50) that is connectable an exhaust aperture (25, 52) for chip ejection/removal from the planer apparatus. Eichberger does not disclose a debris collection container and connector.

Bellew teaches in a closely related art, a planer assembly comprising: a shoe defining an aperture (fig. 5); a body mounted on the shoe, the body defining a recess (fig. 5) and an exhaust aperture (figs. 3-5); a cutting drum (28) having blades (40) rotatably mounted within the recess of the body, a part of the periphery of the cutting drum projecting through the aperture (fig. 5) in the shoe; a deflector (12) having a connector (56; vacuum hose, col. 4, lines 9-11); a motor (24) driveably connected to the cutting drum; an airflow generator (26) operable to create an airflow within the body for entraining debris created by the action of the cutting drum and to move the

debris to the exhaust aperture through which the air and any entrained debris are expelled from the body; and the debris collection container comprising: a receptacle/bag for storage of debris (col.4, lines 9-11) generated by the cutting drum; a curved, part spherical connector (56; figs. 2, 3) connectable between the receptacle/bag and the exhaust aperture of the body of the planer and through which debris can pass from the body to the receptacle. Bellew teaches the use of an airflow generator (26), debris collection container/receptacle and connector so as to facilitate collection of debris generated during operation. Because the references are from a closely related art and deal with a similar problem (i.e., debris/chip collection/removal) it would have been obvious at the time of the invention to the skilled artisan to add conventional elements, i.e. debris collection receptacle and connector to Eichberger as taught by Bellew.

As to the recitation of a transparent connector, Examiner notes it to be convention in the art to construct vacuum hoses, i.e., connectors of transparent material. Further, Van Swearingen teaches in a closely related art the use of a transparent connector (5; col. 1, lines 61-64) in conjunction with a cutting device and dust/bag collector container assembly. Van Swearingen teaches a cutter (1) having an expulsion aperture (2) for expelling cut debris from a material. Van Swearingen further teaches a connector (5) connected to expulsion aperture (2) and further connected to a debris collection container (fig. 1). Van Swearingen explicitly teaches the use of a transparent connector (5) so as to view the debris being expelled to the debris collection container. Because the references are from a closely related art and deal with a similar problem (i.e. expulsion of cut debris from a workpiece into a debris collection container so as not to jam the cutting machine) it would have been obvious at the time of the invention to one having ordinary skill in the art to construct the connector (56; vacuum hose) of a transparent material so

as efficiently monitor the expulsion of the debris from the cutter into the debris collection container as taught by Van Swearingen.

With regard to claims 7 and 11, Eichberger does not explicitly disclose wherein an angle between the rib and the longitudinal axis of the tube section is less than ninety degrees. Examiner notes the specific selection of an optimal value of the angle of the rib and the longitudinal axis requires only routine skill in the art, because discovering an optimum value of a result effective variable involves only routine skill in the art. See *In re Boesch,* 617 F.2d 272, 205, USPQ 215 (CCPA 1980)

Moreover such selection/determination would result from routine engineering practices and experimentation. Furthermore, Examiner notes that the angle of Eichberger's rib need only mate with the receiving chamber (25) to seal the chamber and position the deflector (50) as it relates to the exhaust aperture for directioning and expulsion of debris and/or chips (col. 5, lines 7-14). Thus any mating, i.e. complementary angles between the rib and the chamber (25) would result in efficient functioning of Eichberger.

Response to Arguments

Applicant's arguments filed August 28, 2006 have been carefully considered but they are not deemed persuasive. Applicant's arguments are drawn to the failure of the prior art, Bellew, Eichberger or Van Swearingen to disclose or teach a rib that is angled in relation to a longitudinal axis of a tubular area. This argument, however is not deemed persuasive. As noted above, Eichberger disclose a rib (56) extending from the longitudinal axis of the tube portion (54; figs. 7-9, 11) of the deflector (50). Any extension of the rib from the longitudinal axis is an

angle, thus i.e. angled. Examiner further notes that a perpendicular extension or position of the rib in relation to the longitudinal axis is angled at 90°. Accordingly, Eichberger does teach a rib angled in relation to the longitudinal axis of the tube section. Therefore the claimed invention fails to patentably distinguish over the prior art of record and a rejection in view of Bellew et al., Eichberger et al, and Van Swearingen is made.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is 571-272-4524. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SSelf
November 7, 2006